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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

PRESIDING OFFICER'S
RULING NO. C2001-1/6

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Complaint on Sunday and Holiday Collections

Docket No. C2001-1

PRESIDING OFFICER'S RULING ON
MOTION TO COMPEL THE UNITED STATES POSTAL SERVICE
TO RESPOND TO INTERROGATORIES DFC/USPS-19-21

(Issued July 23, 2001)

On June 26, 2001, Douglas F. Carlson filed a motion to compel the Postal Service to respond to interrogatories DFC/USPS-19-21.¹ All three interrogatories request information either from or regarding the Collection Box Management System (CBMS). The interrogatories were filed with the Commission on May 25, 2001 and May 29, 2001.² The Postal Service filed objections to these interrogatories on June 4, 2001.³ The Postal Service subsequently filed a response to the motion to compel on July 9, 2001.⁴

¹ Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatories DFC/USPS-19-21, filed June 26, 2001. Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatories DFC/USPS-19-21—Erratum, filed July 2, 2001. (Motion). Carlson requested an eight-day extension of time to file this Motion. Douglas F. Carlson Motion for Extension of Time to Respond to Postal Service Objections, filed June 19, 2001. This motion was granted in POR No. C2001-1/3, issued July 29, 2001.

² Douglas F. Carlson Interrogatory to the United States Postal Service (DFC/USPS-19), filed May 25, 2001. Douglas F. Carlson Interrogatories to the United States Postal Service (DFC/USPS-20-21), filed May 29, 2001.

³ Objection of the United States Postal Service to Carlson Interrogatories DFC/USPS-19-21, filed June 4, 2001 (Objection).

⁴ Response of the United States Postal Service in Opposition to the Carlson Motion to Compel Regarding DFC/USPS-19-21, filed July 9, 2001 (Response). The Postal Service had filed a motion for extension of time to file a response. Motion of the United States Postal Service for an Extension of Time to Respond to the Carlson Motion to Compel on DFC/USPS-19-21, filed July 27, 2001. This motion was granted in POR No. C2001-1/3, issued July 29, 2001.

DFC/USPS-19. Interrogatory DFC/USPS-19 requests specific information from the CBMS in Microsoft Excel or similar format. DFC/USPS-19 states:

Please provide the following information, in files in Microsoft Excel or similar format, from the Collection Box Management System database for every collection box in the United States that is in the database: location ID number, box address, description of address, service class, type of box, area of box, posted weekday collection times, posted Saturday collection times, and posted holiday collection times.

The Postal Service objects to this interrogatory on multiple grounds, including objections based on privilege, relevance, and burden. The Service argues that the disclosure of this information may reveal a mail carrier's schedule and line of travel. It concludes that unrestricted knowledge of a mail carrier's schedule and line of travel may pose safety and security risks to both the mail and the mail carrier. Therefore, the Postal Service argues that this information is privileged and should not be disclosed.

The Postal Service states that disclosure of information from the database would aggregate a massive amount of information of a commercial nature. It concludes that it would not be good business practice to disclose this information, nor is the information appropriate for public disclosure.

The Postal Service argues the irrelevance of the requested information in examining nationwide service matters, and questions the mode of analysis contemplated that would be necessary to examine the data provided on a box-by-box basis. The Postal Service also notes that only the last data item in the interrogatory relates to, or may be relevant to, holiday service. Finally, the Postal Service alleges that it would be unduly burdensome to convert the data to the format requested by Carlson because the information resides on a mainframe computer, and that no resources are available for such a task.

In its Response, the Postal Service supports the arguments made in the Objection and substantially expands on the discussion of relevance. The Service questions how Carlson can analyze the requested CBMS data that is at a "micro" level, and come to reasonable conclusions at a level that supports his case.

The Postal Service further argues that this interrogatory is over-broad. This allegation is supported by suggesting methods of narrowly framing alternative interrogatories, and by examining the limited information now available to Carlson that could be used for comparison purposes with the requested information.

The Postal Service also has re-addressed the burden issue and determined that providing the material will require a one or two day effort. However, the Service maintains its position that even this is burdensome because this material is irrelevant and immaterial. It concludes by submitting that if a decision is made to release this material, the answer is suitable for release under protective conditions.

In his Motion, Carlson discusses in detail his need for an answer to the interrogatory, and how the answer is relevant to his case. He states that he is attempting to quantify the harm caused by early collections. Carlson also addresses a pending related federal action based on the Freedom of Information Act (FOIA) that asks for disclosure of this same material. He concludes that there is no justification to deny access to this information under FOIA, nor under the Commissions rules. Furthermore, he states that all of this information is currently in the public domain in a non-aggregated form, and therefore, there is no reason to prevent disclosure.

Carlson addresses the burden issue in the context of similar information that the Postal Service previously provided in another forum. He concludes that the Postal Service effort would not be unduly burdensome. Carlson also addresses the security issue raised by the Postal Service. He concludes that the answer to this interrogatory provides no more information about a mail carrier's line of travel than a visual examination of an individual collection box. Therefore, disclosure would not cause substantial risk or harm.

Although both parties have provided pages of argument concerning this interrogatory, the Postal Service has paved the way to narrow the issues considered in this ruling, and to simplify its resolution. The Postal Service requests that an answer to this interrogatory only be provided under protective conditions, should the Presiding Officer not accept the Postal Service's objections. Response at 12-13. Restricting

dissemination through the use of protective conditions eliminates from consideration most, if not all, of the arguments related to public disclosure of this information. The participants arguments concerning FOIA are effectively arguments for, or against, public disclosure of this information. Providing the answer under protective conditions eliminates the question of whether the answer to this interrogatory should be publicly disclosed. This approach also gives deference to the federal courts to resolve the FOIA issue.⁵ Furthermore, the Postal Service argument on carrier safety becomes much less relevant, because the alleged sensitive information will only be disseminated to a small audience.

The Postal Service has re-addressed the burden issue as requiring a day or two of effort. This appears to be a manageable burden if the information sought by this interrogatory is relevant to this proceeding.

In a previous ruling, POR C2001-1/5, a motion to compel was denied based on relevance. The Commission's policy of examining issues on a national or substantially national basis as opposed to an individual, localized, or temporary basis influenced this decision. Also influencing this decision was the existence of alternative data at the facility-specific level that would allow the Complainant to prepare evidence to develop his argument even if the motion were to be denied. In the instant Motion, interrogatory DFC/USPS-19 requests data that is even further removed from arguments at the national level. This fact argues in favor of denying this Motion. However, an alternative method to aggregate this data (at a substantially nationwide level) into a meaningful form has not been provided, and it is not apparent how this might be accomplished. Furthermore, the quantitative information now on the record is limited. Without quantitative data, the participants may be limited in the arguments that they will be able to make.

A basic issue that the Complaint is attempting to examine is how well the Postal Service informs the mailing public about holiday and holiday eve collections and mail

⁵ At the time of this ruling, there was FOIA litigation pending in federal court requesting access to the same data that is required to answer this interrogatory. This ruling does not reach any conclusions related to the FOIA litigation.

processing. A logical starting point for discussion could be when the Postal Service makes collections from boxes on holidays and holiday eves. This interrogatory provides insight into this question by providing the collection information that is posted on most if not all mail receptacles across the United States. Carlson's Motion indicates several possible uses for this material. This leads to the conclusion that the requested information is likely to lead to admissible evidence that has relevance in this proceeding.

The detail and quantity of requested information is substantial. However, the Postal Service argument that analyzing this data and drawing appropriate conclusions may be a monumental task is not dispositive. This argument confuses relevance of the information, with the potential burden that the requestor has in analyzing and making persuasive argument based on this data. Carlson's perceived burden does not make the requested material irrelevant.

Another issue related to the quantity of data is the Postal Service's allegation of over-breadth for this interrogatory. While this argument may have merit, there appears to be little difference in effort required by the Postal Service to provide all the information requested, versus sorting through the data to determine what is exactly on point. If it were apparent that there would be a substantial difference in burden at this point in time, this issue would have been given more weight.

Ruling on this Motion turns on the determination that the material may lead to the production of admissible evidence. The potential difficulty in digesting this large quantity of material and using it to support argument at a substantially nationwide level is recognized, but that does not make the material any less relevant. The motion to compel a response to DFC/USPS-19 is granted. As requested by the Postal Service, and without analysis as to whether this material is suitable for dissemination without protective conditions, this material may be provided under protective conditions per Appendix A.

DFC/USPS-20. Interrogatory DFC/USPS-20 requests the CBMS operations manual and any other CBMS explanatory documentation. DFC/USPS-20 states:

Please provide an operating manual and other documents that explain the operation of, functions of, and data sorted by the Collection Box Management System database.

The Postal Service objects to this interrogatory based on relevance. It also claims commercial sensitivity, because there "may" be higher level documents regarding the system that otherwise would not be publicly disclosed. In its Response, the Postal Service maintains this position. The Postal Service states that access would have to be appropriately limited by protective conditions if a response to this interrogatory were not irrelevant and immaterial.

Carlson argues that the Postal Service should be required to release documents that are not commercially sensitive, and explain why other documents should not be provided or move for release of the documents under protective conditions. He states that he is seeking the requested information to examine if any specific report, files, or historical data exists that could possible expedite resolution of issues in this proceeding. He explains that the Postal Service controls the information necessary to prove his case, and that he may not even know how to ask for the pertinent information. An answer to this interrogatory may provide such guidance. Therefore, he alleges that the interrogatory is reasonably calculated to lead to admissible evidence on actual collection practices.

It is difficult to sustain an objection to an interrogatory because the answer "may" contain sensitive information. As a starting point, the Postal Service has to identify the specific documents that contain sensitive information, and provide an explanation for why the documents are sensitive. The documents that do not contain sensitive information should be released without objection.

Furthermore, the irrelevance of this interrogatory is not apparent. The CBMS is directly related to mail collection, therefore materials explaining the CBMS may lead to admissible evidence on actual collection practices. Other than stating that the information requested is irrelevant and immaterial, the Postal Service has not provided

any support for its position. The motion to compel a response to DFC/USPS-20 is granted.

DFC/USPS-21. Interrogatory DFC/USPS-21 requests additional information about the CBMS, including information concerning individual reports, data retention, and reports generated resulting from analysis of the individual CBMS reports.

DFC/USPS-21 states:

- a. Please confirm that the Collection Box Management System database prints out a history report or similar report after a carrier or collector's scanner device is uploaded into a computer to show, for each collection box on a collection route, the location ID number of each collection box, the location of each collection box, the type of each collection box, the posted collection time or times of each collection box, the time that the collector scanned the bar code affixed inside each collection box, and a comment such as "late" or "missed." If you confirm, please provide a sample printout of this report, and please identify all the information or messages that this report may display. If you do not confirm, please explain fully, also identifying any parts of this interrogatory that you do confirm.
- b. Please explain where the hard-copy reports described in (a) are retained and for how long.
- c. Please explain where the electronic version of the data described in (a) resides and the length of time for which these data are retained.
- d. Please identify whether the electronic version of the data described in (a) is stored centrally at a headquarters or nationwide level or at a district or area level only.
- e. Please describe any reports that the Postal Service has produced at the district, area, or headquarters level based on an analysis of the data described in (a).

The Postal Service objects to this interrogatory based on relevance, and the failure to limit the request to reports relating to holiday service. Additionally, the Postal Service objects to subpart (e) based on burden. The Service cites the difficulty in surveying the almost one hundred district and area offices, and isolating reports that could be responsive to the interrogatory.

Carlson requests an answer to this interrogatory to determine what type of relevant information is in the possession of the Postal Service. Once he makes this determination, he states that he then can formulate an interrogatory of reasonable scope and specificity to gather the information that he requires for his case. Thus, Carlson concludes that this interrogatory is reasonably calculated to lead to the discovery of admissible evidence. He also states that if the presiding officer agrees with the Postal Service's objection to DFC/USPS-21(e) on the grounds of burden, the Postal Service may respond only as it pertains to reports produced at the headquarters level.

This interrogatory appears to be relevant in that it is reasonably calculated to lead to the discovery of admissible evidence. Therefore, the motion to compel a response to DFC/USPS-21 is granted. To reduce the burden on the Postal Service, the Service may respond to DFC/USPS-21(e) as it pertains to reports produced at the headquarters level only. Apparently, this will satisfy Carlson's minimum requirement, at the same time reducing the burden of the Postal Service. The Postal Service argument that the interrogatory does not limit itself to holiday service issues is reasonable given the scope of this Complaint. Therefore, the answer to interrogatory DFC/USPS-21 also may be limited to responsive documentation related to the holiday and holiday eve timeframe.

RULING

The Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatories DFC/USPS-19-21, filed June 26, 2001, is granted consistent with the text of this ruling. The answer to DFC/USPS-19 may be provided under protective conditions per Appendix A.


Ruth Y. Goldway
Presiding Officer

**STATEMENT OF COMPLIANCE
WITH PROTECTIVE CONDITIONS**

The following protective conditions limit access to materials provided in Docket No. C2001-1 by the Postal Service in response to Presiding Officer Ruling No. C2001-1/6 (hereinafter, "these materials"). Individuals seeking to obtain access to such material must agree to comply with these conditions, complete the attached certifications, provide the completed certifications to the Commission, and serve them upon counsel for the party submitting the confidential material.

1. Only a person who is either:
 - (a) an employee of the Postal Rate Commission (including the Office of the Consumer Advocate) with a need-to-know; or
 - (b) a participant in Postal Rate Commission Docket No. C2001-1; or a person employed by such participant, or acting as agent, consultant, contractor, affiliated person, or other representative of such participant for purposes related to the litigation of Docket No. C2001-1; shall be granted access to these materials. However, no person involved in competitive decision-making for any entity that might gain competitive advantage from use of this information shall be granted access to these materials. "Involved in competitive decision-making" includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with a person or entity having a proprietary interest in the protected material.
2. No person granted access to these materials is permitted to disseminate them in whole or in part to any person not authorized to obtain access under these conditions.
3. The final date of any participant's access shall be:
 - (a) the date on which the Postal Rate Commission issues its report or otherwise closes Docket No. C2001-1; or
 - (b) the date on which that participant formally withdraws from Docket No. C2001-1; or

- (c) the last date on which the person who obtains access is under contract or retained or otherwise affiliated with the Docket No. C2001-1 participant on whose behalf that person obtains access, whichever comes first. The participant immediately shall notify the Postal Rate Commission and counsel for the party who provided the protected material of the termination of any such business and consulting arrangement or retainer or affiliation that occurs before the closing of the evidentiary record.
- 4. Immediately after the Commission issues its report in Docket No. C2001-1, a participant (and any person working on behalf of that participant) who has obtained a copy of these materials shall certify to the Commission:
 - (a) that the copy was maintained in accordance with these conditions (or others established by the Commission); and
 - (b) that the copy (and any duplicates) either have been destroyed or returned to the Commission.
- 5. The duties of any persons obtaining access to these materials shall apply to material disclosed or duplicated in writing, orally, electronically or otherwise, by any means, format, or medium. These duties shall apply to the disclosure of excerpts from or parts of the document, as well as to the entire document.
- 6. All persons who obtain access to these materials are required to protect the document by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of the document as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially-sensitive, and privileged information.
- 7. These conditions shall apply to any revised, amended, or supplemental versions of materials provided in Docket No. C2001-1.
- 8. The duty of nondisclosure of anyone obtaining access to these materials is continuing, terminable only by specific order of the Commission.
- 9. Any Docket No. C2001-1 participant or other person seeking access to these materials by requesting access, consents to these or such other conditions as the Commission may approve.

CERTIFICATION

The undersigned represents that:

Access to materials provided in Docket No. C2001-1 by the Postal Service in response to Presiding Officer Ruling No. C2001-1/6 (hereinafter, "these materials") has been authorized by the Commission.

The cover or label of the copy obtained is marked with my name.

I agree to use the information only for purposes of analyzing matters at issue in Docket No. C2001-1.

I certify that I have read and understand the above protective conditions and am eligible to receive access to materials under paragraph 1 of the protective conditions. I further agree to comply with all protective conditions and will maintain in strict confidence these materials in accordance with all of the protective conditions set out above.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____

**CERTIFICATION UPON RETURN OF
PROTECTED MATERIALS**

Pursuant to the Certification which I previously filed with the Commission regarding information provided in Docket No. C2001-1 by the Postal Service in response to Presiding Officer Ruling No. C2001-1/6 (hereinafter, "these materials"), received on behalf of myself and/or the party which I represent (as indicated below), I now affirm as follows:

1. I have remained eligible to receive access to materials under paragraph 1 of the protective conditions throughout the period those materials have been in my possession. Further, I have complied with all conditions, and have maintained these materials in strict confidence in accordance with all of the protective conditions set out above.
2. I have used the information only for purposes of analyzing matters at issue in Docket No. C2001-1.
3. I have returned the information to the Postal Rate Commission.
4. I have either surrendered to the Postal Rate Commission or destroyed all copies of the information that I obtained or that have been made from that information.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____